

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

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Amendment of the Commission's Rules to  
Establish Part 27, the Wireless  
Communications Service (WCS)

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GN Docket No. 96-228

To: The Commission

DOCKET FILE COPY ORIGINAL

**REPLY COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"),<sup>1</sup> by its attorneys and pursuant to § 1.415 of the Commission's rules, hereby respectfully submits these Reply Comments in response to the comments filed in GN Docket No. 96-228 regarding the licensing of the Wireless Communications Service ("WCS"). These Reply Comments represent the concerns of small and rural wireless telecommunications providers interested in participating in the provision of WCS. These small businesses and rural telephone companies will be effectively foreclosed from participating in the provision of WCS if the Commission fails to fulfill its obligations under § 309(j) of the Communications Act of 1934, as amended ("the Act"), and licenses WCS on the basis of large geographic areas as proposed in the Notice of Proposed Rulemaking ("NPRM").

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<sup>1</sup> RTG is a group of rural telephone companies who have joined together to advance their interests in providing innovative wireless telecommunications technologies to rural America.

## I. COMMENTS

The Federal Communications Commission ("FCC" or "Commission") faces a difficult task in meeting the deadlines which Congress imposed in the Appropriation's Act of 1997.<sup>2</sup> In attempting to satisfy the expedited schedule, the Commission must still meet the demands and obligations of § 309(j).<sup>3</sup> Most importantly, the Commission must promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people including those residing in rural areas by "*avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants including small businesses [and] rural telephone companies.*"<sup>4</sup> The Appropriations Act of 1997 did not relieve the Commission of its obligation to ensure that WCS is available to rural populations and that rural telephone companies and small business have a realistic opportunity to provide WCS.

In the interest of expediency however, the Commission proposes licensing WCS on a nationwide or regional basis, a proposal which nearly all the commenters staunchly oppose.<sup>5</sup> These commenters correctly argue that the use of regional or nationwide licenses will

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<sup>2</sup> Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, Stat. 3009 (1996) ("Appropriations Act of 1997").

<sup>3</sup> See, e.g., Comments of the Cellular Telecommunication Industry Association ("CTIA") at 3; Comments of Bell Atlantic NYNEX Mobile, Inc. ("BANM") at 6; Comments of the Competition Policy Institute ("CPI") at 2.

<sup>4</sup> 47 U.S.C § 309(j)(B)(3) (emphasis added).

<sup>5</sup> E.g., BANM at 2-3; CTIA at 12; Sprint at 5; Comments of ALLTEL Mobile Communications, Inc. ("ALLTEL") at 3; Comments of BellSouth Corporation ("BellSouth") at 5; Comments of the Personal Communications Industry Association ("PCIA") at 12.

preclude designated entities, particularly rural telephone companies and small businesses from participating in the WCS auction.<sup>6</sup>

The Commission having raised the possibility of issuing nationwide WCS licenses, has caused some potential bidders to retreat to the alternative of licensing WCS on the basis of Major Trading Areas ("MTAs").<sup>7</sup> Unfortunately, licensing WCS on the basis of huge MTAs will have almost as adverse an impact on rural areas as using nationwide licenses. Such a plan will deny WCS to rural areas and effectively prevent small businesses and rural telephone companies from participating in the provision of WCS.<sup>8</sup> RTG agrees with GTE that the use of MTAs or other "large license areas will result in the effective exclusion of sparsely populated, rural areas in favor of the more profitable and easier serviced metropolitan areas."<sup>9</sup>

Some of the commenters advocating the use of MTAs try to suggest that MTAs are "relatively small" in size and that the use of MTAs will provide an opportunity for designated entities to participate in a WCS auction.<sup>10</sup> Any suggestion that MTAs are "relatively small" in size is simply inaccurate.

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<sup>6</sup> See, e.g., CTIA at 13-14; BANM at 2-3.

<sup>7</sup> PCIA at 16; ALLTEL at 3; Comments of AT&T Wireless Services ("AT&T") at 2.

<sup>8</sup> It is true that use of MTAs will give designated entities a slightly greater opportunity than the use of nationwide licensing, but only marginally.

<sup>9</sup> GTE at 4.

<sup>10</sup> PCIA at 17; AT&T at 3. AT&T describes MTAs as "moderately sized" and "relatively small" areas. AT&T at 3-4. Perhaps to AT&T, MTAs are small and affordable, but AT&T is not among the designated entities which 309(j) was legislated to promote.

Parked beside a semi-truck, a Lincoln Continental may look like a "relatively small" car, but try parking a Lincoln in the "small car only" spot of a parking garage, and the Lincoln's true scope is evident. Only by comparing an MTA to a nationwide area does an MTA look "smaller."<sup>11</sup> By any honest and reasonable assessment, the Lincoln is a big car and an MTA is a large geographic area. Licensing WCS on the basis of such large areas will violate the provisions of § 309(j).

As a representative of rural wireless providers composed entirely of rural telecommunications providers, RTG expressly disputes the claims by PCIA and AT&T that an MTA-based approach will permit entrepreneurs and smaller companies an opportunity to participate in WCS.<sup>12</sup> RTG notes that in making such a claim, PCIA can only be representing its larger members and that PCIA and AT&T do not represent the voice of small businesses.

CTIA in its comments is ambiguous as to whether the Commission should use MTAs, Basic Trading Areas ("BTAs") or some combination of the two.<sup>13</sup> CTIA states that the Commission can meet its § 309(j) obligations to rural telephone companies and small business "by licensing 10 MHz spectrum blocks on a BTA/MTA basis."<sup>14</sup> To the extent CTIA's comments could be read as accepting the use of MTAs alone as a basis for the Commission

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<sup>11</sup> In this regard, the Commission's proposal to use nationwide licensing areas appears to be an intentionally high offer, merely intended to give the Commission room to "come down" or split the difference.

<sup>12</sup> See, PCIA at 17; AT&T at 3.

<sup>13</sup> Compare, CTIA at 2 ("10 MHz blocks on an MTA basis") with CTIA at 12 (service areas "no larger than BTAs and MTAs") and CTIA at 14 ("10 MHz spectrum blocks on a BTA/MTA basis").

<sup>14</sup> CTIA at 14.

to meet its § 309(j) obligations, RTG expressly disputes this conclusion. Such argument does not reflect the view of rural wireless providers. As CTIA itself notes, CTIA's membership includes "48 of the 50 largest cellular, broadband personal communications service ("PCS"), enhanced specialized mobile radio, and mobile satellite service providers."<sup>15</sup> MTAs are not the functional equivalent of BTAs. Accordingly, the Commission should not base the use of MTAs on a finding that their use would benefit designated entities. The record simply does not support such a finding.

To the contrary, most commenters correctly conclude that the best way to encourage participation by smaller entities and to meet the other objectives of § 309 of the Act is to license WCS on the basis of smaller license areas.<sup>16</sup> These commenters propose licensing WCS on the basis of smaller geographic service areas such as BTAs or Economic Areas ("EAs").<sup>17</sup> CTIA correctly states, "Smaller license areas, such as BTAs, facilitate rapid deployment, minimize construction costs and encourage the participation of smaller businesses."<sup>18</sup> GTE notes, "BTAs present an approach that is more likely to be responsive to

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<sup>15</sup> *Id.* at n. 1.

<sup>16</sup> *See, e.g.*, CTIA at 14; Comments of GTE Service Corporation ("GTE") at 4; Comments of Omnipoint Corporation ("Omnipoint") at 9; Comments of Sprint Spectrum L.P. d/b/a Sprint PCS and Sprint Corporation ("Sprint") at 6.

<sup>17</sup> *E.g.*, GTE at 4 (BTAs); BellSouth at 6-7 (BTAs); Omnipoint at 8-9 (BTAs); Sprint at 6-7 (BTAs); BANM at 3 (BTAs); Comments of AirTouch Communications, Inc. ("AirTouch") at 7-8 ("Given that the current WCS proposal is modeled after [General Wireless Communications Service] GWCS, the use of EAs would be appropriate."); Comments of Vanguard Cellular Systems ("Vanguard") at 3 (EAs).

<sup>18</sup> CTIA at 13.

rural areas than would either of the larger alternatives."<sup>19</sup> RTG is unaware of any commenter disputing the conclusion that smaller license areas best achieve the objectives of § 309(j).

By licensing three 10 MHz blocks in each of the 493 BTA-like areas rather than the 51 MTAs, the Commission would increase opportunities for small business by 967 %, and by awarding three licenses in each of the 175 EA-like areas instead of MTAs the Commission would increase opportunity by 343 %. The use of BTA-like areas or EA-like areas represents substantially increased opportunity over the use of MTAs for additional entities to participate in the WCS auction.

While the use of BTAs or EAs is preferable to the use of MTAs, as RTG noted in its comments, basing WCS on Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") is the best method by which the Commission could realistically effectuate the goals of § 309(j). The use of MSAs and RSAs will ensure the rapid deployment of cellular services to rural areas and afford rural telephone companies and other small entities a realistic chance to participate in the provision of WCS.

Although the Commission's schedule for auctioning WCS is hectic, BANM correctly observes, "Proper licensing decisions that achieve the objectives of the Communications Act should not...be sacrificed for speed."<sup>20</sup> BANM goes on to observe that the Commission has learned that "there are many ways to expedite the [auction] process independent of the

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<sup>19</sup> GTE at 4.

<sup>20</sup> BANM at 8.

number of licenses."<sup>21</sup> For example, the Commission can speed the process by eliminating the use of waivers and bid withdrawals or by increasing the activity level or minimum bid amount. With properly crafted auction procedures, the Commission can use smaller geographic service areas and still meet the deadlines of the Appropriations Act of 1997.

Finally, while smaller geographic license areas will enhance opportunities for designated entities, their use alone does not relieve the Commission of its obligation to encourage designated entities to participate in the auction by creating other incentives or benefits for such designated entities.

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<sup>21</sup> *Id.* at 8. BANM suggests that conducting more than one bidding round per day is one possible way to expedite the auction. Merely increasing the number of bidding rounds per day by extending the hours of bidding is not necessarily the answer since such an approach disproportionately affects small businesses who do not have the staff to cover bidding at all hours. *See*, Letter of Wireless Communications Ventures ("WCV") to Chairman Reed Hundt, December 9, 1996.

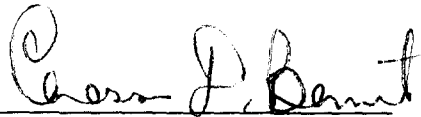
## II. CONCLUSION

Licensing WCS on a nationwide, regional or MTA basis will deny service to rural populations and deny rural telephone companies an opportunity to participate in the provision of WCS in violation § 309(j) of the Act. Instead, the Commission should license WCS on the basis of small geographic service areas such as MSAs and RSAs, or at the largest, EA-like areas.

Accordingly, RTG respectfully urges the Commission to adopt the recommendations proposed herein and in its Comments filed December 4, 1996.

Respectfully submitted,

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### **Certificate of Service**

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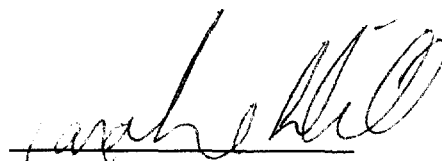
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